

SECTION 101 – WRDA 1986, AS AMENDED
MODEL PROJECT COOPERATION AGREEMENT
FOR
COMMERCIAL NAVIGATION HARBOR PROJECTS
AND
SEPARABLE ELEMENTS
THAT DO NOT
REQUIRE CONSTRUCTION OF A
DREDGED OR EXCAVATED MATERIAL DISPOSAL FACILITY

JUNE 4, 2004

APPLICABILITY. – The attached model agreement is one of three models for specifically authorized commercial navigation harbor projects or separable elements of specifically authorized commercial navigation harbor projects. The following descriptions of the three models are provided to assist in determining the correct model to be used for your project. None of the models discussed below should be used for recreational navigation harbor projects, multiple-purpose commercial and recreational navigation harbor projects, or Section 107 Continuing Authority Program navigation harbor projects. Models for the Section 107 Continuing Authority Program navigation harbor projects can be found in the approved model section of the PCA Web page. If there is no approved model posted in the approved model section of the PCA Web page that is applicable to your particular project or separable element, the District Project Delivery Team should consult with the appropriate HQ RIT for guidance on drafting the appropriate agreement.

Navigation – without Dredged or Excavated Material Disposal Facilities (DMDF) – The attached model should be used only for specifically authorized commercial navigation harbor projects and separable elements of specifically authorized commercial navigation harbor projects that will not require construction of a DMDF. For projects using this model, generally all of the dredged or excavated material will be placed in an open water environment.

Navigation – with DMDF – Use this model for all specifically authorized commercial navigation harbor projects and separable elements of specifically authorized commercial navigation harbor projects that will require construction of one or more DMDFs. If you are unsure of whether to use this model or the model titled *Navigation – without DMDF*, we recommend using this model.

Adding New DMDF to Existing Project – Use this model only when a new DMDF is required to be added to an existing project and there is no existing project agreement that includes language addressing cost sharing of DMDFs in accordance with Section 201 of the Water Resources Development Act of 1996, Public Law 104-303, subsequent periods of

construction, and the recalculation of the additional amount after each subsequent period of construction.

NOTES. – The following pages (iii – xv) contain numbered notes to assist in drafting an agreement for your project. Throughout the model agreement, there are references to the numbered notes (example: [SEE NOTE – 6]) to direct you to the appropriate note that provides insight and guidance on use of optional language or information required to fill in the blanks. Several of the notes are general in nature and should be reviewed and discussed with the sponsor during preparation of the draft agreement for your project.

OPTIONAL LANGUAGE. – The use of optional language allows the model to be applicable to a larger universe of projects. Many of the numbered notes (example: [SEE NOTE – 11]) require you to choose between multiple versions of language or to choose whether or not to include a paragraph, sentence, or phrase depending on the specifics of your project. In many cases optional language to address a concept, such as local service facilities or a separable element, is required in numerous locations throughout the agreement. Each of these locations has been identified with numbered notes; however, it is important to ensure that, if the optional language addressing a certain concept is included in one location, it is also included in all other appropriate locations. Correct use of the optional language is not considered a deviation from the model.

BLANKS. – There are numerous locations where information specific to your project is required to fill in a blank. All of the blanks must be filled in, except the date in the first paragraph, prior to forwarding the agreement for review. Including the information required to fill in a blank is not considered a deviation from the model.

DEFINED TERMS SHOWN IN ITALICS. – Throughout the agreement the terms defined in Article I are shown in italics. Do not remove any of the italics from the agreement.

NOTES:

1. FORMAT. - Remove the cover pages, notes section, all bold type references to notes, and any bold type text from the agreement prior to forwarding for review. Reminder: Do not remove any of the italics from the agreement.

2. MULTIPLE SPONSORS. - In the event there are two or more entities serving as the sponsors for the project, and there is no division of responsibilities between or among them, the agreement can be modified to identify all the entities collectively as the “Non-Federal Sponsors”. However, it should be explained to all entities that the term “Non-Federal Sponsors” is construed to hold multiple sponsors jointly and severally liable. The changes outlined below are required to identify all entities collectively as “Non-Federal Sponsors” and are not considered a deviation from the model.

A. Modify title to include name of each entity serving as a sponsor.

B. Modify first paragraph to include name of each entity serving as a sponsor. (Example: ... Magoffin County Fiscal Court represented by the Magoffin County Judge and the City of Salyersville, Kentucky represented by its Mayor (hereinafter the “Non-Federal Sponsors”))

C. Change “Non-Federal Sponsor” to “Non-Federal Sponsors” throughout the agreement. There are several paragraphs where this change will require additional grammatical changes immediately following the phrase “Non-Federal Sponsors” to reflect multiple sponsors. (i.e. “its” to “their” or “assumes” to “assume”, etc.).

D. On the signature page, a separate signature block will be required for each entity serving as a sponsor.

E. A separate Certificate of Authority will be required for each entity serving as a sponsor.

F. A Certification Regarding Lobbying must be signed by each signatory to the agreement.

3. GOVERNMENT REPRESENTATIVE. – Insert the title of the Government representative signing the agreement. Do not include the name, only the title. (Example: U.S. Army Engineer, Mobile District)

4. REFERENCE TO NON-FEDERAL SPONSOR. - Use “Non-Federal Sponsor”, “Local Sponsor”, “Port”, “Port Authority”, “State”, “Commonwealth”, “Territory” or other identifier as preferred by the sponsor in the parenthetical phrase and consistently throughout the agreement. This change is not considered a deviation from the model. If this change is made in one location, ensure that all other locations are similarly changed.

5. NON-FEDERAL SPONSOR REPRESENTATIVE. – Insert the title of the sponsor’s representative signing the agreement. Do not include the name, only the title. The title shown for the sponsor’s representative should match the title shown on the signature page and should be preceded by “the” or “its”, as appropriate, to match the title of the sponsor’s representative. (Example: the Mayor)

6. AUTHORIZED PROJECT OR SEPARABLE ELEMENT OF AUTHORIZED PROJECT.

A. For each location that requires a choice between two options - Choose Option (1) if the project in the agreement is the authorized project or Option (2) if the project in the agreement is a separable element of the authorized project. The Whereas clause options each contain two Whereas clauses. Delete, in its entirety, the option not used. When citing the authority for construction in the Whereas clause be sure to include the full name of the public law with the section and paragraph numbers. (Example: Brunswick Harbor, Georgia navigation project authorized in the Water Resources Development Act (WRDA) of 1999 – the correct reference is Section 101(a)(19) of the Water Resources Development Act of 1999, Public Law 106-53)

B. Optional Article XX – If Option (2) of paragraph A. of this note was selected elsewhere in the agreement then the optional language after the colon must be included in the agreement.

7. SECTION 902. - Include the optional Whereas clause and optional Article XX in the agreement for projects and separable elements that are subject to the maximum cost limitations of Section 902 of WRDA 1986, Public Law 99-662, as amended (33 U.S.C. 2280). Reminder: If optional Article XX is not necessary, renumber the remaining articles in the agreement and verify all previous and subsequent references to the remaining articles throughout the agreement and correct, as necessary. Renumbering the remaining articles in the agreement and correction of all references to the remaining articles are not considered a deviation from the model.

A. The dollar amount shown in optional Article XX should be calculated in accordance with the appendix of ER 1105-2-100 that addresses Section 902 limit calculations.

B. The dollar amount shown in optional Article XX should be computed using the same price levels and inflation allowances as the costs shown in Article VI.A.1. of the agreement.

8. PED/DESIGN AGREEMENT AND DESIGN COORDINATION TEAM ACTIVITIES.

A. Whereas clauses - Include the optional Whereas clause in the agreement only if a Preconstruction Engineering and Design (PED) or Design Agreement for the project was executed. The term “Design Agreement” is used throughout the text of the agreement regardless of which type of agreement (PED or Design) was executed.

B. Articles I.D. and II.D. – Choose, if applicable, Option (1) if a PED Agreement or Design Agreement was executed or Option (2) if a PED Agreement or Design Agreement was not executed but a PED Coordination Team or Design Coordination Team was established with the sponsor and costs were incurred on or after October 1, 1996 (pursuant to Policy Guidance Letter (PGL) 55). If neither of the choices above applies, do not include the language from either Option (1) or Option (2) in the agreement. The term “Design Coordination Team Activities” is used throughout the text of the agreement regardless of type of coordination team (PED or Design) established.

C. Optional Articles I.S. and I.T. - Include these optional articles in the agreement only if Option (2) of paragraph B. of this note was selected elsewhere in the agreement. Reminder: If optional Articles I.S. and I.T. are not necessary, reletter the remaining paragraphs in Article I and verify all previous and subsequent references to paragraphs in Article I throughout the agreement and correct, as necessary. Relettering the remaining paragraphs in Article I and correction of all references to paragraphs in Article I are not considered a deviation from the model.

D. For those projects or separable elements thereof where the sponsor for the Design Agreement (Design sponsor) is not the same as the sponsor for this agreement (PCA sponsor), the PCA sponsor shall receive credit toward the non-Federal share required by this agreement for the Design sponsor’s contributions made under the Design Agreement.

9. FORMAT FOR DATE. – The civilian format for any dates included in the agreement should be used. (Example: January 22, 2000)

10. DEPTH OF THE CHANNEL IN EXCESS OF 45 FEET.

A. For each location that requires a choice between two options - Choose Option (1) if the depth, excluding associated over-depth and entrance channel wave allowances, of the project in the agreement is less than or equal to 45 feet or Option (2) if the depth, excluding associated over-depth and entrance channel wave allowances, of the project in the agreement is in excess of 45 feet. Delete, in its entirety, the option not used.

B. For each location where optional language or an optional paragraph(s) is provided, include the optional language after the colon or the entire paragraph(s), as applicable, only if the depth, excluding associated over-depth and entrance channel wave allowances, of the project in the agreement is in excess of 45 feet. Reminder: If optional Article I.J. and Article III.C. are not necessary, reletter the remaining paragraphs in Article I and Article III, as applicable, and verify all previous and subsequent references to paragraphs in Article I or Article III throughout the agreement and correct, as necessary. Relettering the remaining paragraphs in Article I or Article III and correction of all references to paragraphs in Article I or Article III are not considered a deviation from the model.

C. Optional Article VI.F. – The blank in Article VI.F.1. should be filled in with the date (month, day) that cost projections for operation and maintenance to be performed in the next fiscal year must be provided to the sponsor. In order to select Option (3) in Articles VI.F.2. and VI.F.3. (see note 32), optional Article I.Q. must be included in the agreement (see note 18).

11. LOCAL SERVICE FACILITIES. - Examples of local service facilities are berthing areas, mooring facilities, landside terminals, etc. Verify whether the authorizing documents or decision document upon which the agreement is based requires the sponsor to operate and maintain any local service facilities. If it does, then all language on local service facilities should be included in the agreement, even in those cases where construction of local service facilities is not required but operation and maintenance of existing local service facilities is required (e.g. berthing areas are already at sufficient depth for new channel). Reminder: The sponsor is responsible to take all actions necessary to enable construction or operation and maintenance of the local service facilities, including but not necessarily limited to providing the lands, easements, rights-of-way, or relocations and investigations for hazardous substances regardless of whether the construction or operation and maintenance of the local service facilities is performed directly by the sponsor or by the Government on behalf of the sponsor.

A. For each location that requires a choice between two options - Choose Option (1) if the authorizing documents or the decision document upon which the agreement is based requires the sponsor to provide local service facilities as an item of cooperation or Option (2) if the authorizing documents and the decision document upon which the agreement is based do not require the sponsor to provide any local service facilities as an item of cooperation. Delete, in its entirety, the option not used.

B. For each location where optional language or an optional paragraph(s) is provided, include the optional language after the colon or the entire paragraph(s), as applicable, only if the authorizing documents or the decision document upon which the agreement is based requires the sponsor to provide local service facilities as an item of cooperation. Reminder: If optional Articles I.R. and XIV.B. are not necessary, reletter the remaining paragraphs in Article I and Article XIV, as applicable, and verify all previous and subsequent references to paragraphs in Article I and Article XIV, as applicable, throughout the agreement and correct, as necessary. Relettering the remaining paragraphs in Article I and Article XIV and correction of all references to paragraphs in Article I and Article XIV are not considered a deviation from the model.

C. Optional Article I.R. – The specific local service facilities described in the document(s) should be listed. Provide greater detail if requested by the sponsor. The title of the decision document that describes the project and the local service facilities addressed by the agreement should also be included (such as a Feasibility Report with Engineering Appendix, General Reevaluation Report, or Letter Report, etc). Also include the title of the approving official (such as Assistant Secretary of the Army (Civil Works); Chief of Engineers; Commander, _____ Division; or Commander, _____ District) and the date of approval.

12. DESCRIPTION OF GENERAL NAVIGATION FEATURES. – The input required for the description of the general navigation features is described below.

A. Describe the general navigation features to be undertaken pursuant to this agreement in detail sufficient to avoid any confusion over what is or is not included. If the project is a separable element of an authorized project, special care should be exercised to ensure that the general navigation features to be undertaken pursuant to this agreement are accurately described. Reminder: Do not include any lands, easements, rights-of-way, or relocations (LERR) requirements, deep draft utility relocation requirements, removal requirements, or local service facilities requirements of the project in this description because these are not general navigation features.

B. The title and date of the decision document that describes the project should be included (such as Feasibility Report with Engineering Appendix, General Reevaluation Report, etc.). Also include the title of the approving official (such as Assistant Secretary of the Army (Civil Works); Chief of Engineers, Commander, _____ Division; or Commander, _____ District) and the date of approval.

13. TOTAL COSTS OF CONSTRUCTION OF THE GENERAL NAVIGATION FEATURES. - See ER 1165-2-131, PGL 55, and Project Management Guidance Letters 4, 10 and 11 (revised) for details on which costs and values are included in total costs of construction of the general navigation features and see the project decision document for further project specific cost information.

14. CONTINUING PLANNING AND ENGINEERING. – Include the optional language after the colon only if the project in the agreement was funded by Continuing Planning and Engineering Funds (CP&E) in FY 1986 or 1987. Since this would apply only to older projects, verify the need for inclusion of this language with your Programs office.

15. ADVANCED ENGINEERING AND DESIGN. - Include the optional language after the colon only if the project in the agreement was funded by Advanced Engineering and Design Funds (AE&D) before FY 1988. Since this would apply only to older projects, verify the need for inclusion of this language with your Programs office.

16. LOCATION OF PROJECT. - Fill in the appropriate State.

A. The phrase “State of _____” is used throughout the agreement. The substitution of “Commonwealth of” or “Territory of” consistently throughout the agreement, as appropriate, based on the location of the project is not considered a deviation from the model.

B. In those instances where a State is the sponsor: in Article I.K. replace “3) the Non-Federal Sponsor, the State of _____, or the Government” with “3) the Non-Federal Sponsor or the Government”; in Article II.J. replace “neither the Non-Federal Sponsor nor the State of _____” with “the Non-Federal Sponsor” and replace “both the Non-Federal

Sponsor and the State of _____ make” with “the Non-Federal Sponsor makes”; and in Article II.K.3. replace “the Non-Federal Sponsor or the State of _____” with “the Non-Federal Sponsor”. These changes are not considered a deviation from the model.

17. BETTERMENTS. – A betterment is a difference in quality of an element of the general navigation features to be designed/constructed, not a difference in kind. (Example: bulkhead to be replaced has been determined to be a general navigation feature and sponsor requests that construction incorporate steel I beams instead of timber piles) The term “betterment” does not include additional features or locally preferred plans. “Betterment” should not be viewed as a catch-all solution to allow the Government to design/construct anything/everything requested by the sponsor.

18. FISCAL YEAR OF THE NON-FEDERAL SPONSOR. – If requested by the sponsor include optional Article I.Q. in the agreement indicating that the timing of payments from the sponsor will be on the sponsor’s fiscal year basis. If optional Article I.Q. is included, Option (2) of Article VI.B. must be selected (see note 28) and Option (3) in Articles VI.B.1., VI.B.2., and VI.B.3. must be selected (see note 32). Fill in blanks with the beginning and ending dates of the sponsor’s fiscal year. (Example – beginning date July 1 and ending date June 30) Reminder: If optional Article I.Q. is not necessary, reletter the remaining paragraphs in Article I and verify all previous and subsequent references to paragraphs in Article I throughout the agreement and correct, as necessary. Relettering the remaining paragraphs in Article I and correction of all references to paragraphs in Article I are not considered a deviation from the model.

A. Regardless of whose fiscal year is used for timing of the payments in the agreement, the timing of the payments cannot be such that they, in any way, adversely effect the Government’s ability to perform the work, whether by contract or in-house labor. Also, the payments from the sponsor and the availability of Federal funds must be managed to ensure that the proportional cash financing required by the agreement is maintained throughout the life of the agreement.

B. The term “fiscal year” occurs in numerous locations throughout the agreement. If optional Article I.Q. is included in the agreement, do not execute a “change all” command to change all occurrences of the term “fiscal year” to “fiscal year of the Non-Federal Sponsor”. Only those occurrences of the term “fiscal year” which are highlighted as optional text in Article VI should be changed. The other occurrences of the term “fiscal year” should not be modified since they are referring to the fiscal year of the Government.

19. VOLUNTARY DEFERRAL OF CONSTRUCTION PARAGRAPH. - Include optional Article II.A.4. in the agreement upon the written request of the sponsor. If this paragraph is not included, renumber any follow-on paragraphs under Article II.A. of the agreement. Renumbering the remaining paragraphs in Article II.A. is not considered a deviation from the model.

A. This deferral will allow the Government and sponsor to evaluate whether to continue with construction, modify construction to reduce costs, or defer construction up to

three years to allow the sponsor time to budget for additional funding for its share. However, this deferral cannot exceed three years.

B. The sponsor may specify the dollar amount to be included in this paragraph; however, the dollar amount shown cannot be less than total costs of construction of the general navigation features shown in Article VI.A.1. of the agreement. Further, it is recommended that the amount shown be somewhat greater than total costs of construction of the general navigation features since any increase in total costs of construction of the general navigation features would inevitably lead to invoking the terms of this paragraph. Reminder: Do not include any costs of the local service facilities or LERR in the dollar amount shown in this paragraph. As defined in Article I.D. of the agreement, total costs of construction of the general navigation features expressly excludes any costs of local service facilities or LERR.

C. Inclusion of this paragraph does not set a maximum amount of the sponsor's contributions for total costs of construction of the general navigation features, nor does it enable the sponsor to terminate the project.

20. CONGRESSIONAL ADD PARAGRAPH. – Include optional Article II.A.5. in the agreement for any project or separable element that does not comply with Army budget policy as of the date of the agreement, even if the project has received all funds estimated to be needed to complete construction of the general navigation features. Verify the need for inclusion of this paragraph and the amounts to be included in the blank(s) with your Programs Management Team.

A. Choose Option (1) if the project in the agreement is the authorized project or Option (2) if the project in the agreement is a separable element of the authorized project. Delete, in its entirety, the option not used.

B. Option (1). The dollar amount to be included in the blank should be the sum of all General Investigations and Construction, General funds provided in the Conference Reports accompanying Energy and Water Appropriations for AE&D, CP&E, preconstruction engineering and design, and construction of the project adjusted for any amounts reprogrammed into the project, any rescissions, savings and slippage, or any amounts reprogrammed from the project, as of the date of the agreement.

C. Option (2). The dollar amount to be included in both the first and third blanks should be the sum of all General Investigations and Construction, General funds provided in the Conference Reports accompanying Energy and Water Appropriations for AE&D, CP&E, preconstruction engineering and design, and construction of the authorized project adjusted for any amounts reprogrammed into the authorized project, any rescissions, savings and slippage, or any amounts reprogrammed from the authorized project, as of the date of the agreement. The dollar amount to be included in the second blank should be that portion of the amount in the first blank that is projected to be available for the project in this agreement. Typically, this amount is the dollar amount set aside for payment of the estimated Federal share of the project in this agreement although the entry of such amount

should not be construed either as a commitment of, or an absolute limitation on, Federal expenditures in such amount.

21. ALLOCATION OF COSTS AND NAVIGATION COST SHARING. - Section 101 of WRDA 1986, Public Law 99-662, as amended (33 U.S.C. 2211), specifies the cost sharing requirements for navigation projects. For additional explanation, refer to ER 1165-2-131, ER 1105-2-100, and Policy Guidance Letter 62. Cost sharing during the period of construction varies according to the depth of dredging for the general navigation features (excluding material from the dimensions of preexisting projects). During the period of construction, the sponsor's cost share for each depth increment is: 1) 10 percent for costs allocated to depths not in excess of 20 feet, excluding associated over-depth and entrance channel wave allowances; 2) 25 percent for costs allocated to depths in excess of 20 feet but not in excess of 45 feet, excluding associated over-depth and entrance channel wave allowances; and 3) 50 percent for costs allocated to depths in excess of 45 feet, excluding associated over-depth and entrance channel wave allowances.

A. Articles II.C. and II.D. – Choose Option (1) if the dredging spans more than one depth increment or Option (2) if the dredging does not span more than one depth increment. If Option (2) was selected include the appropriate cost sharing percentage for the correct depth increment in the blank in Article II.D. of the agreement. Delete, in its entirety, the option not used.

B. Article II.E. – The preexisting non-Federal navigation projects addressed by this paragraph are limited to those located within the footprint of the proposed Federal navigation project. It should not be used to construct or operate and maintain local access channels which are not a part of the proposed Federal navigation project. Any costs allocated by the Government to a preexisting Federal navigation project shall be paid by the responsible party in accordance with the provisions of the written cost sharing agreement, or as otherwise required if there is no written cost sharing agreement, for such preexisting Federal navigation project.

C. Article VI.A.2. – If Option (1) of paragraph A. of this note was selected elsewhere in the agreement then the optional language after the colon must be included in the agreement.

22. ARTICLE II.L. - ADDITIONAL WORK. - The Government should not accept any requests for 1) acquisition of LER necessary for the local service facilities or betterments or 2) performance of relocations necessary for the local service facilities or betterments. Similarly, the Government should not accept any requests for performance of a deep draft utility relocation because the Government may have to exercise available Federal rights to cause the owner to remove its facilities prior to agreement regarding cost sharing with the sponsor.

23. CONSTRUCTION OR OPERATION AND MAINTENANCE OF LOCAL SERVICE FACILITIES. - Include the additional language after the colon only if requested by the sponsor.

24. ADDITIONAL ITEMS OF COOPERATION. - Include any additional paragraphs in the agreement necessary to reflect special requirements of non-Federal cooperation specified in the authorizing documents and/or the decision document upon which the agreement is based. Carefully review the Report of the Chief of Engineers and items of non-Federal cooperation in the decision document to ensure that all items of cooperation are covered in the agreement. Including the additional items of non-Federal cooperation in the agreement is not considered a deviation from the model.

25. CREDIT FOR VALUE OF LERR. – The Government shall afford credit toward the additional 10 percent of total costs of construction of the general navigation features for the value of LERR provided for the general navigation features. Do not stop the determination of the value of LERR just because the credit to be afforded for the value of LERR equals or exceeds the current estimate for the additional amount. Although the excess LERR credit will not be refunded to the sponsor, the excess LERR credit will be applied against any increase in the additional amount when it is recalculated as a result of a final accounting.

26. GUIDANCE ON APPRAISALS. - See chapters 4 and 12 of ER 405-1-12 for guidance on the use of Federal versus State rules in preparing an appraisal.

27. ARTICLE VI.A. – BREAKDOWN OF PROJECT COSTS.

A. The costs shown in Article VI.A.1. should be the current estimate of the costs at current price levels and inflated through the period of construction. Reminder: Do not include any costs of the local service facilities or LERR in the dollar amounts shown for general navigation features in this paragraph. As defined in Article I.D. of the agreement, total costs of construction of the general navigation features expressly excludes any costs of local service facilities or LERR.

B. To determine the sponsor's contribution of funds required by Article II.D.: 1) determine the sponsor's share of total costs of construction of the general navigation features; 2) subtract from the sponsor's share of total costs of construction of the general navigation features the incidental costs incurred by the sponsor in accomplishing removals (Article II.K.3), the costs of the sponsor's participation in the Project Coordination Team (Article V), costs of audits performed by the sponsor (Article X), the costs of investigations for hazardous substances performed by the sponsor (Article XIV.A.), and if applicable, the value of a non-Federal interest's contributions toward the Design Agreement or costs of sponsor's Design Coordination Activities; 3) if the resultant is greater than zero, this amount is the sponsor's contribution of funds that should be shown in the second blank in Article VI.A.1. If the resultant is zero, then "0" should be shown in the second blank in Article VI.A.1. (Example: Channel to be dredged from existing 35 foot depth to 40 feet; total costs of construction of general navigation features = \$25,000,000; sponsor's costs incurred for Articles II.K.3., V, X, XIV.A., and contributions towards Design Agreement = \$1,625,000; sponsor's contribution of funds required by Article II.D. = $(\$25,000,000 \times .25) - (\$1,625,000) = \$4,625,000$)

C. To determine the percentage of the sponsor's proportionate share of financial obligations for construction: 1) determine the financial obligations of the Government by subtracting from total costs of construction of the general navigation features the incidental costs incurred by the sponsor in accomplishing removals (Article II.K.3), the costs of the sponsor's participation in the Project Coordination Team (Article V), the costs of audits performed by the sponsor (Article X), the costs of investigations for hazardous substances performed by the sponsor (Article XIV.A.), and if applicable, the costs of sponsor's Design Coordination Activities. Do NOT subtract the value of a non-Federal interest's contributions toward the Design Agreement; 2) divide the sponsor's total contribution of funds required toward total costs of construction of the general navigation features by the total financial obligations of the Government. Any non-Federal interest's contributions toward a Design Agreement should be included in the sponsor's total contribution of funds required toward total costs of construction of the general navigation features and in the total financial obligations of the Government. This is the percentage that should be shown in the third blank in Article VI.A.1. (Example: Channel to be dredged from existing 35 foot depth to 40 feet; total costs of construction of general navigation features = \$25,000,000; sponsor's costs incurred for Articles II.K.3., V, X, and XIV.A. = \$625,000; sponsor's total contribution of funds required toward total costs of construction of the general navigation features = $(\$25,000,000 \times .25) - (\$625,000) = \$5,625,000$; total financial obligations of the Government = $\$25,000,000 - (\$625,000) = \$24,375,000$; percentage of sponsor's proportionate share of financial obligations for construction = $\$5,625,000 / \$24,375,000 = 23.08$ percent)

D. The blank in Article VI.A.2. should be filled in with the date (month, year) of the first quarterly report of costs to be provided to the sponsor.

28. PAYMENT BY LUMP SUM.

A. For each location that requires a choice between two options - Choose Option (1) if the sponsor elects to provide its cash share in one lump sum or Option (2) if the sponsor elects to provide its share in periodic payments. Delete, in its entirety, the option not used.

B. For each location where optional language or an optional paragraph(s) is provided, include the optional language after the colon or the entire paragraph(s), as applicable, only if the sponsor elects to provide its share in periodic payments.

29. PAYMENT MECHANISMS. – Both Option (1) and Option (2) of Article VI.B.1. offer the sponsor four mechanisms from which to choose in deciding how to provide its required monetary contribution to the Government. The sponsor should indicate its choice during the course of negotiating the agreement. However, the sponsor may use any of the methods or a combination of them, during the life of the agreement in accordance with guidance governing the use of electronic funds transfers, escrow agreements, and irrevocable letters of credit. Do not delete any of the four mechanisms.

30. TIMING OF FIRST REQUEST FOR SPONSOR'S FUNDS. – Insert the number of days (must be 30 or more).

31. LENGTH OF TIME TO PROVIDE ADDITIONAL FUNDS. - Insert the number of days. The period of time should not exceed the time shown unless the District Engineer approves a longer period of time after determining that the longer period of time will not result in the Government using its funds to meet a shortfall in the sponsor's funds. The district must determine the need for additional funds from the sponsor far enough ahead of time to permit the sponsor full use of the specified period of time. Neither party's funds should be used to meet any shortfall in the other party's funds.

32. TIMING OF SPONSOR'S PAYMENT. – Choose Option (1) if the timing of the payments from the sponsor will be on the Federal fiscal year basis, Option (2) if the timing of the payments from the sponsor will be on a quarterly basis, or Option (3) if the timing of the payments from the sponsor will be on the fiscal year of the Non-Federal Sponsor's basis. Delete, in their entirety, the options not used. Whichever option is chosen it should be used consistently throughout the agreement. However, do not choose an option if that option would adversely effect the Government's ability to perform the work, whether by contract or in-house labor. Also, the payments from the sponsor and availability of Federal funds must be managed to ensure that the proportional cash financing required by the agreement is maintained throughout the life of the agreement. Option (3), may be selected only if optional Article I.Q. is included in the agreement (see note 18).

33. FINAL ACCOUNTING. – When a final accounting cannot be conducted in a timely manner because of outstanding claims and appeals and eminent domain proceedings, an interim accounting should be conducted. The district should use its best judgment to determine whether a final accounting can be conducted in a timely manner after a review of any outstanding claims and appeals and eminent domain proceedings and the estimated time to resolve such outstanding claims and appeals and eminent domain proceedings.

34. LENGTH OF PAYMENT PERIOD. – Insert the number of years (can not exceed 30).

35. ARTICLE IX – HOLD AND SAVE. - Include the optional language after the colon only if optional Article XXI - Obligations of Future Appropriations (see note 41) is included in the agreement and the sponsor requests this optional language be added to Article IX of the agreement. In addition, if this language is included, delete the second occurrence of "the".

36. ARTICLE XIV - HAZARDOUS SUBSTANCES. – In accordance with paragraph A. and optional paragraph B. of this Article, the sponsor is to perform or ensure performance of investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) on lands, easements, and rights-of-way necessary for the general navigation features and local service facilities, respectively. It is Army policy that the sponsor either perform these investigations in-house or contract for their performance with a third party. The Government should not perform these investigations on behalf of the sponsor. For additional explanation, refer to ER 1165-2-132.

37. ARTICLE XV - NOTICES. – Input the full address of the sponsor and Government - including titles or office title/symbol of individuals to receive the notices. Do not include the name of the individual to receive the notices as it may change throughout the life of the agreement.

38. ARTICLE XVIII and XIX – THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES and NON-LIABILITY OF OFFICERS AND EMPLOYEES. - Articles XVIII and XIX are optional and either can be deleted if requested by the sponsor. If one or both of the articles are deleted, renumber the remaining articles in the agreement and verify the references throughout the agreement to the remaining articles. In particular, if the article addressing the Section 902 Project Cost Limit is required for the agreement, verify the reference to that article contained in Article VI.A.2. of the agreement and correct, as necessary. Similarly, if the article addressing Obligations of Future Appropriations is included in the agreement, and the sponsor requests the optional language in Article IX (see note 35), verify the reference contained in Article IX to the article addressing Obligations of Future Appropriations and correct, as necessary. Renumbering the remaining articles in the agreement and correction of all references to the remaining articles are not considered a deviation from the model.

39. COSTS OF LOCAL SERVICE FACILITIES. - Include the optional language after the colon only if the cost of the local service facilities is included in the total cost set forth in the project authorization. Recommend checking the tables or costs shown in the Report of the Chief of Engineers or the decision document referenced in the authorizing language to verify whether the costs of the local service facilities were included in the authorized amount.

40. VALUE OF LERR. - Include the optional language after the colon only if the value of the LERR is included in the total cost set forth in the project authorization. Recommend checking the tables or costs shown in the Report of the Chief of Engineers or the decision document referenced in the authorizing language to verify whether the value of the LERR was included in the authorized amount.

41. ARTICLE XXI – OBLIGATIONS OF FUTURE APPROPRIATIONS. - Include optional Article XXI in the agreement only if the sponsor requests this language and only after District Counsel determines that the sponsor is a State agency or a political subdivision of the State that derives its funds for the project directly from appropriations and the sponsor has constitutional or statutory limitations prohibiting it from committing future appropriations. The information to be added in the first three blanks in Article XXI.A. should identify the body that makes the appropriations. (Example: Legislature of the State of Ohio or City Counsel of the City of Cleveland)

42. ARTICLE XXI.A. – ADDITIONAL RESTRICTION ON OBLIGATIONS OF FUTURE APPROPRIATIONS. - Include the optional language after the colon if requested by the sponsor. The information to be included in the blanks should provide more detailed information on the location of the obligation of future appropriations restriction. (Example: Section 7 of the City Charter of the City of Cleveland)

43. SPONSOR’S BUDGET CYCLE. - Choose Option (1) if the sponsor has a 1 year budget cycle or Option (2) if the sponsor has a 2 year budget cycle.

44. TITLE OF GOVERNMENT REPRESENTATIVE. – Insert the title of the Government representative signing the agreement. Do not include the name, only the title. If the signature authority is delegated to the district, the phrase “District Engineer” should be used in this location. If the signature authority is not delegated, the title shown should match the title of the Government representative shown in the first paragraph (see note 3).

45. CERTIFICATE OF AUTHORITY. - The person signing the Certificate of Authority cannot be the signatory to the agreement. The person signing the Certificate of Authority is certifying that the signatory to the agreement has the authority to obligate the sponsor. Do not forget to fill in the name in the first line prior to execution of the agreement.

46. PREPARING AGREEMENT FOR SIGNATURE.

A. When printing the agreement for execution: 1) remove the cover page, notes section, bold type references to notes, and any bold type text from the agreement; 2) ensure that the appropriate information has been included in all blanks in the agreement and the Certificate of Authority; 3) ensure that titles of articles are not the last thing at the bottom of the page; and 4) ensure that there are no page breaks which allow half empty pages. Reminder: Do not remove any of the italics from the agreement.

B. If the signature authority has been delegated to the District Engineer: 1) the title of the Government representative in the first paragraph (see note 3) should be “U.S. Army Engineer, _____ District”; 2) the title of the Government representative in the last paragraph (see note 44) should be “District Engineer”; and 3) since this is a civilian document use the civilian version of the District Engineer’s signature block.

C. If the signature authority is not delegated, the title in the first paragraph (see note 3) and last paragraph should match the title of the Government representative shown in the signature block.

D. Before signature by the Government representative, ensure that the sponsor signs and dates a minimum of four copies of the agreement, and Certification Regarding Lobbying, and that the Certificates of Authority are signed and dated by the appropriate people. The date on the first page should be filled in by the Government representative signing the agreement, not the sponsor.

E. The Government should retain two copies of the fully executed agreement. All other copies should be provided to the sponsor. Xerox copies of the fully executed agreement should be provided to the Division and to the HQ RIT. In addition, an electronic copy (pdf format) of the executed agreement, with signatures, should be provided to CECW-PC for posting on the PCA Web page.

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[FULL NAME OF NON-FEDERAL SPONSOR]
FOR CONSTRUCTION
OF THE
[FULL NAME OF PROJECT OR SEPARABLE ELEMENT]

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”) represented by the [SEE NOTE - 3] and [FULL NAME OF NON-FEDERAL SPONSOR] [SEE NOTE - 4] (hereinafter the “Non-Federal Sponsor”), represented by [SEE NOTE - 5].

WITNESSETH, THAT:

[SEE NOTE – 6]

OPTION 1 – (FOLLOWING TWO WHEREAS CLAUSES)

WHEREAS, construction of the [FULL NAME OF THE AUTHORIZED PROJECT] (hereinafter the “*Project*”, as defined in Article I.A. of this Agreement) at [SPECIFIC LOCATION OF THE AUTHORIZED PROJECT, INCLUDING STATE, COMMONWEALTH, OR TERRITORY] was authorized by [CITE AUTHORITY INCLUDING PUBLIC LAW NUMBER];

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement (hereinafter the “Agreement”) for construction of the *Project*;

OPTION 2 – (FOLLOWING TWO WHEREAS CLAUSES)

WHEREAS, construction of the [FULL NAME OF THE AUTHORIZED PROJECT] (hereinafter the “Authorized Project”) at [SPECIFIC LOCATION OF THE AUTHORIZED PROJECT, INCLUDING STATE, COMMONWEALTH, OR TERRITORY] was authorized by [CITE AUTHORITY INCLUDING PUBLIC LAW NUMBER];

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement (hereinafter the “Agreement”) for construction of the [NAME OF THE SEPARABLE ELEMENT OF THE AUTHORIZED PROJECT] (a separable element of the Authorized Project and hereinafter the “*Project*”, as defined in Article I.A. of this Agreement);

WHEREAS, Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2211), specifies the cost-sharing requirements applicable to the *Project*;

[SEE NOTE - 7]

WHEREAS, Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280), establishes the maximum amount of costs for the [SEE NOTE - 6 - CHOOSE: (1) *Project* (2) Authorized Project] and sets forth procedures for adjusting such maximum amount;

[SEE NOTE - 8]

WHEREAS, the Government and a non-Federal interest entered into an agreement, dated [SEE NOTE - 9] _____, for engineering and design of the *Project* (hereinafter the “Design Agreement”), under the terms of which the non-Federal interest contributed a portion of the costs for engineering and design;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2211), provide, *inter alia*, that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the *Project*.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS

A. The term “*Project*” shall mean the *general navigation features*; all *removals* accomplished in accordance with Article II of this Agreement; and all lands, easements, rights-of-way, [SEE NOTE - 10 - CHOOSE: (1) and *relocations* (2) *relocations*, and *deep draft utility relocations*] that the Government, in accordance with Article III of this Agreement, determines to be necessary for construction or operation and maintenance of the *general navigation features*, but shall not include [SEE NOTE - 11 - CHOOSE: (1) aids to navigation or the *local service facilities*. (2) aids to navigation.]

[SEE NOTE - 12]

B. The term “*general navigation features*” shall mean the _____, as generally described in the [FULL TITLE OF DECISION DOCUMENT], dated _____, _____ and approved by the _____ on _____, _____. The term does not include any lands, easements, rights-of-way, [SEE NOTE - 10 - CHOOSE: (1) *relocations*; (2) *relocations*, or *deep draft utility relocations*;] *removals*; *betterments*; [SEE NOTE - 11 - CHOOSE: (1) *aids to navigation*; or *local service facilities*. (2) or *aids to navigation*.]

C. The term “*period of construction*” shall mean the time from the date that the Government either issues the solicitation for the first construction contract for the *general navigation features* or commences construction of the *general navigation features* using the Government’s own forces, whichever is earlier, to the date that construction of the *general navigation features* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article XIII or [SEE NOTE - 11 - CHOOSE: (1) Article XIV.D. (2) Article XIV.C.] of this Agreement, whichever is earlier.

[SEE NOTE - 13]

D. The term “*total costs of construction of the general navigation features*” shall mean all costs incurred by the Non-Federal Sponsor or the Government in accordance with the terms of this Agreement directly related to construction of the *general navigation features*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: [SEE NOTE - 14: the Government’s Continuing Planning and Engineering costs incurred after October 1, 1985;] [SEE NOTE - 15: the Government’s Advanced Engineering and Design costs;] the Government’s Preconstruction Engineering and Design costs; [SEE NOTE - 8 - CHOOSE: (1) the value of the contributions provided by a non-Federal interest under the terms of the Design Agreement; (2) the *costs of the Non-Federal Sponsor’s Design Coordination Team Activities*;] the Government’s engineering and design costs during construction; the Non-Federal Sponsor’s and the Government’s costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; the Government’s costs of historic preservation activities in accordance with Articles XVII.A.1. and XVII.C.1. of this Agreement; the Government’s actual construction costs (including the costs of alteration, lowering, raising, or replacement and attendant demolition of any *bridge over navigable waters of the United States*); the Government’s supervision and administration costs; the Non-Federal Sponsor’s and the Government’s costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Government’s costs of contract dispute settlements or awards; in accordance with Article II.K.3. of this Agreement, incidental costs incurred by the Non-Federal Sponsor in accomplishing *removals*; direct and incidental costs of *removals* accomplished by the Government in accordance with Article II.J. of this Agreement; and the Non-Federal Sponsor’s and the Government’s costs of audit in accordance with Articles X.B. and X.C. of this Agreement. The term does not include the value of any lands, easements, rights-of-way, [SEE NOTE - 10 - CHOOSE: (1) or *relocations*; (2) *relocations*, or *deep draft utility relocations*;] any costs incurred by the Non-Federal Sponsor in accomplishing *removals* other than incidental costs; any financial obligations for operation and maintenance of the *general navigation features*; any costs allocated by the Government to a preexisting Federal or non-Federal navigation project in accordance with Article II.C. of this Agreement; any costs of

additional work under Article II.L.2. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; [SEE NOTE - 11 - CHOOSE: (1) any costs of aids to navigation; any costs of construction or operation and maintenance of the *local service facilities*; or the Non-Federal Sponsor's costs of negotiating this Agreement. (2) any costs of aids to navigation; or the Non-Federal Sponsor's costs of negotiating this Agreement.]

E. The term “*financial obligations for construction*” shall mean the financial obligations of the Government that result or would result in costs that are or would be included in *total costs of construction of the general navigation features*.

F. The term “*non-Federal proportionate share*” shall mean the ratio of the Non-Federal Sponsor's total contribution of funds required by Article II.D. of this Agreement to total *financial obligations for construction*, as projected by the Government.

G. The term “*highway*” shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

H. The term “*bridge over navigable waters of the United States*” shall mean a lawful bridge over the navigable waters of the United States, including approaches, fenders, and appurtenances thereto, which is used and operated for the purpose of carrying railroad traffic, or both railroad and *highway* traffic, or if a state, county, municipality, or other political subdivision is the owner or joint owner thereof, which is used and operated for the purpose of carrying *highway* traffic.

I. The term “*relocation*” shall mean providing a functionally equivalent facility to the owner of a *utility*, cemetery, *highway*, railroad (including any bridge thereof), or public facility, excluding any *bridge over navigable waters of the United States*, when such action is authorized in accordance with applicable legal principles of just compensation or providing a functionally equivalent facility when such action is specifically provided for, and is identified as a relocation, in the authorizing legislation for the *Project* or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

[SEE NOTE - 10]

J. The term “*deep draft utility relocation*” shall mean providing a functionally equivalent facility to the owner of a *utility* that may take the form of alteration, lowering, raising, or replacement and attendant demolition of the *utility* owner's existing facility, or part thereof, that serves the general public when such action is necessary for the construction or operation and maintenance of *general navigation features* with an authorized depth of greater than 45 feet, excluding associated *over-depth* and entrance channel wave allowances, and when such action is not a *relocation*, as defined in paragraph I. of this Article.

[SEE NOTE – 10]

OPTION 1

K. The term “*removal*” shall mean eliminating an obstruction (other than a *bridge over navigable waters of the United States*) where the Government determines, after consultation with the Non-Federal Sponsor, that: 1) elimination is necessary for construction or operation and maintenance of the *general navigation features*, including the borrowing of material or the disposal of dredged or excavated material associated therewith; and 2) the Non-Federal Sponsor, the [SEE NOTE - 16] State of _____, or the Government has the legal capability to accomplish elimination of the obstruction at the expense of the owner or operator thereof.

OPTION 2

K. The term “*removal*” shall mean eliminating an obstruction (other than a *bridge over navigable waters of the United States*) where the Government determines, after consultation with the Non-Federal Sponsor, that: 1) elimination is necessary for construction or operation and maintenance of the *general navigation features*, including the borrowing of material or the disposal of dredged or excavated material associated therewith; 2) the Non-Federal Sponsor, the [SEE NOTE - 16] State of _____, or the Government has the legal capability to accomplish elimination of the obstruction at the expense of the owner or operator thereof; and 3) eliminating the obstruction is not part of a *deep draft utility relocation* as defined in paragraph J. of this Article.

[SEE NOTE - 17]

L. The term “*betterment*” shall mean a difference in the engineering and design or construction of an element of the *general navigation features* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the engineering and design or construction of that element. The term does not include features in addition to the *general navigation features*.

M. The term “*over-depth*” shall mean additional dimensions associated with a given depth that are required to accomplish advance maintenance, if any, and to compensate for dredging inaccuracies at that depth.

N. The term “*utility*” shall mean that which is defined as a public utility pursuant to generally applicable law of the [SEE NOTE - 16] State of _____.

O. The term “*Federal program funds*” shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

P. The term “*fiscal year*” shall mean one year beginning on October 1 and ending on September 30.

[SEE NOTE - 18]

Q. The term “*fiscal year of the Non-Federal Sponsor*” shall mean one year beginning on _____ and ending on _____.

[SEE NOTE - 11]

R. The term “*local service facilities*” shall mean those facilities that the Non-Federal Sponsor must construct or operate and maintain to realize the benefits of the *general navigation features*. The *local service facilities* are _____, as generally described in the _____, dated _____, _____ and approved by the _____ on _____, _____.

[SEE NOTE - 8 – FOLLOWING TWO PARAGRAPHS]

S. The term “*Design Coordination Team Activities*” shall mean the oversight of issues related to: engineering and design, including scheduling of reports and work products; development of plans and specifications; real property and *relocation* requirements of the *Project*; contract awards and modifications; contract costs; the Government’s cost projections; anticipated requirements and needed capabilities for performance of operation and maintenance of the *Project*; and other related matters.

T. The term “*costs of the Non-Federal Sponsor’s Design Coordination Team Activities*” shall mean the costs that are incurred by the Non-Federal Sponsor for *Design Coordination Team Activities* on or after October 1, 1996 and before the effective date of this Agreement, as determined by the Government and subject to an audit for reasonableness, allowability, and allocability in accordance with Article X.C. of this Agreement.

[SEE NOTE – 10]

U. The term “*deep draft portion of financial obligations for operation and maintenance*” shall mean an amount equal to the Government’s total financial obligations for operation and maintenance of the *Project* (including associated *over-depth* and entrance channel wave allowances) less the estimated total financial obligations for operation and maintenance of the *Project* (including associated *over-depth* and entrance channel wave allowances) if the *Project* had an authorized depth of 45 feet.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously construct the *general navigation features* (including alteration, lowering, raising, or replacement and attendant demolition of any *bridge over navigable waters of the United States*), applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first construction contract for the *general navigation features* or commence construction of the *general navigation features* using the Government's own forces until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with [SEE NOTE - 11 - CHOOSE: (1) the *Project* and the *local service facilities*. (2) the *Project*.]

2. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts or commencement of construction using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *general navigation features* shall be exclusively within the control of the Government.

3. At the time the U.S. Army Engineer for the _____ District (hereinafter the "District Engineer") furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract for the *general navigation features*, the District Engineer shall furnish the Non-Federal Sponsor with a copy thereof.

[SEE NOTE - 19]

4. Notwithstanding paragraph A.2. of this Article, if the award of any contract for the *general navigation features*, or continuation of construction on any remaining *general navigation features* using the Government's own forces would result in *total costs of construction of the general navigation features* exceeding \$_____, the Government and the Non-Federal Sponsor agree to defer award of that contract, award of all remaining contracts for the *general navigation features*, and continuation of construction on any remaining *general navigation features* using the Government's own forces until such time as the Government and the Non-Federal Sponsor agree in writing to proceed with further contract awards for the *general navigation features* or the continuation of construction on any remaining *general navigation features* using the Government's own forces, but in no event shall the award of contracts or the continuation of construction using the Government's own forces be deferred for more than three years. Notwithstanding this general provision for deferral, the Government may award a contract or contracts, or continue with construction using the Government's own forces, after consultation with the Non-Federal Sponsor and after the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts or continuation of construction using the Government's own forces must proceed in order to comply with law or to protect human life or property from imminent and substantial harm.

[SEE NOTE - 20]

OPTION 1

5. As of the effective date of this Agreement, \$_____ of Federal funds have been made available for the *Project*. The Government makes no commitment to budget additional Federal funds for the *Project*. Notwithstanding any other provision of this Agreement, the Government's financial participation in the *Project* is limited to this amount together with any additional funds that the Congress may appropriate for the *Project*. In the event that the Congress does not appropriate funds for the *Project* sufficient to meet the Federal share of the costs of work on the *Project* in the then-current or upcoming *fiscal year*, the Government shall notify the Non-Federal Sponsor of the insufficiency of funds and the parties, within the Federal and non-Federal funds available for the *Project*, shall suspend construction or terminate this Agreement in accordance with Article XIII.B. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds available for the *Project* and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with [SEE NOTE - 10 - CHOOSE: (1) paragraphs D. and E. (2) paragraphs D. and E., or H.] of this Article, as applicable, as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

OPTION 2

5. As of the effective date of this Agreement, \$_____ of Federal funds have been made available for the Authorized Project of which \$_____ is available for the *Project*. The Government makes no commitment to budget additional Federal funds for the Authorized Project. Notwithstanding any other provision of this Agreement, the Government's financial participation in all elements of the Authorized Project, including the *Project*, is limited to \$_____ plus any additional funds that the Congress may appropriate for the Authorized Project. In the event that the Congress does not appropriate funds for the Authorized Project sufficient to meet the Federal share of the costs of work on the *Project* and other elements of the Authorized Project in the then-current or upcoming *fiscal year*, the Government shall notify the Non-Federal Sponsor of the insufficiency of funds and the parties, within the Federal and non-Federal funds available for the *Project*, shall suspend construction or terminate this Agreement in accordance with Article XIII.B. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds available for the *Project* and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with [SEE NOTE - 10 - CHOOSE: (1) paragraphs D. and E. (2) paragraphs D. and E., or H.] of this Article, as applicable, as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

B. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those necessary for the borrowing of material or the disposal of dredged or excavated material, that the Government determines the Non-Federal Sponsor must provide for construction or operation and maintenance of the *general navigation features*, and shall perform or ensure performance of all [SEE NOTE - 10 - CHOOSE: (1) *relocations* (2) *relocations* and *deep draft utility relocations*] that the

Government determines to be necessary for construction or operation and maintenance of the *general navigation features*.

[SEE NOTE – 21]

OPTION 1 – (PARAGRAPHS C. AND D.)

C. The Government shall allocate *total costs of construction of the general navigation features* among one or more of the following depth increments: not in excess of 20 feet, excluding associated *over-depth* and entrance channel wave allowances; or in excess of 20 feet but not in excess of 45 feet, excluding associated *over-depth* and entrance channel wave allowances [SEE NOTE - 10: ; or in excess of 45 feet, excluding associated *over-depth* and entrance channel wave allowances]. Further, the Government shall allocate to any preexisting Federal or non-Federal navigation project all costs associated with the dredging, excavation, and disposal of material from the dimensions, including associated *over-depth* and entrance channel wave allowances, of such project.

D. The Non-Federal Sponsor shall contribute 10 percent of that portion of *total costs of construction of the general navigation features* allocated by the Government to a depth not in excess of 20 feet, excluding associated *over-depth* and entrance channel wave allowances; plus 25 percent of that portion of *total costs of construction of the general navigation features* allocated by the Government to a depth in excess of 20 feet but not in excess of 45 feet, excluding associated *over-depth* and entrance channel wave allowances [SEE NOTE - 10: ; plus 50 percent of that portion of *total costs of construction of the general navigation features* allocated by the Government to a depth in excess of 45 feet, excluding associated *over-depth* and entrance channel wave allowances]. If the Government projects that [SEE NOTE - 8 - **CHOOSE: (1)** the value of the contributions provided by a non-Federal interest under the terms of the Design Agreement and **(2)** the *costs of the Non-Federal Sponsor's Design Coordination Team Activities* and] the Non-Federal Sponsor's contributions under paragraph K.3. of this Article and under Articles V, X, and XIV.A. of this Agreement that are allocated by the Government to *total costs of construction of the general navigation features* will be less than the Non-Federal Sponsor's share required by this paragraph, the Non-Federal Sponsor, in accordance with Article VI.B. of this Agreement, shall provide additional funds in the amount necessary to meet the Non-Federal Sponsor's share required by this paragraph.

OPTION 2 – (PARAGRAPHS C. AND D.)

C. The Government shall allocate *total costs of construction of the general navigation features* to the final dredged depth, excluding associated *over-depth* and entrance channel wave allowances. Further, the Government shall allocate to any preexisting Federal or non-Federal navigation project all costs associated with the dredging, excavation, and disposal of material from the dimensions, including associated *over-depth* and entrance channel wave allowances, of such project.

D. The Non-Federal Sponsor shall contribute _____ percent of *total costs of construction of the general navigation features*. If the Government projects that [SEE NOTE - 8

- **CHOOSE: (1)** the value of the contributions provided by a non-Federal interest under the terms of the Design Agreement and **(2)** the *costs of the Non-Federal Sponsor's Design Coordination Team Activities* and] the Non-Federal Sponsor's contributions under paragraph K.3. of this Article and under Articles V, X, and XIV.A. of this Agreement that are allocated by the Government to *total costs of construction of the general navigation features* will be less than the Non-Federal Sponsor's share required by this paragraph, the Non-Federal Sponsor, in accordance with Article VI.B. of this Agreement, shall provide additional funds in the amount necessary to meet the Non-Federal Sponsor's share required by this paragraph.

[SEE NOTE – 21]

E. In accordance with Article VI.B. of this Agreement, the Non-Federal Sponsor shall pay 100 percent of the costs allocated by the Government pursuant to paragraph C. of this Article to a preexisting non-Federal navigation project. The Non-Federal Sponsor shall have no obligation under this Agreement to pay any costs allocated by the Government pursuant to paragraph C. of this Article to a preexisting Federal navigation project.

F. In accordance with Article VI.D. of this Agreement, the Non-Federal Sponsor shall pay an additional amount equal to 10 percent of *total costs of construction of the general navigation features* less the amount of credit afforded by the Government for the value of the lands, easements, rights-of-way, [SEE NOTE - 10 - **CHOOSE: (1)** and *relocations. (2) relocations, and deep draft utility relocations.*] The Non-Federal Sponsor shall not be entitled to reimbursement for any value of lands, easements, rights-of-way, [SEE NOTE - 10 - **CHOOSE: (1)** and *relocations (2) and relocations, and deep draft utility relocations*] provided or performed pursuant to Article III of this Agreement that exceeds 10 percent of *total costs of construction of the general navigation features*.

G. The District Engineer shall promptly notify the Non-Federal Sponsor in writing of the conclusion of the *period of construction*. Upon providing such notification, the Government shall conduct an accounting, in accordance with Article VI of this Agreement, and furnish the results to the Non-Federal Sponsor.

H. The Government, subject to the availability of funds and as it determines necessary, shall operate and maintain the *general navigation features* in accordance with Article VIII of this Agreement. The Government shall be responsible for all financial obligations for operation and maintenance of the *general navigation features* [SEE NOTE - 10: , except that the Non-Federal Sponsor shall contribute, in accordance with Article VI.F. of this Agreement, 50 percent of the *deep draft portion of financial obligations for operation and maintenance*].

I. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

J. The Government shall accomplish all *removals* that neither the Non-Federal Sponsor nor the [SEE NOTE – 16] State of _____ has the legal capability to accomplish where both

the Non-Federal Sponsor and the [SEE NOTE - 16] State of _____ make a written request for the Government to accomplish such *removals*. Further, the Government shall accomplish all *removals* that the authorizing legislation for the *Project*, or any report referenced therein, expressly requires the Government to accomplish.

1. All costs incurred by the Government in accomplishing *removals* shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

2. However, in the event a court determines that the owner of an obstruction is entitled to payment of just compensation as the result of elimination of the obstruction, such *removal* shall be reclassified as part of the Non-Federal Sponsor's responsibility to provide lands, easements, and rights-of-way, or to perform or ensure performance of *relocations*, as applicable, pursuant to paragraph B. of this Article.

K. The Non-Federal Sponsor shall accomplish all *removals*, other than those *removals* specifically assigned to the Government by paragraph J. of this Article, in accordance with the provisions of this paragraph.

1. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such *removals*, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with accomplishing such *removals*. Unless the Government agrees to a later date in writing, prior to the issuance of the solicitation for each Government contract for construction or operation and maintenance of the *general navigation features*, or prior to the Government incurring any financial obligation for construction or operation and maintenance of the *general navigation features* using the Government's own forces, the Non-Federal Sponsor shall accomplish all *removals* set forth in such descriptions that the Government determines to be necessary for that work.

2. In the event a court determines that the owner of an obstruction is entitled to payment of just compensation as the result of elimination of the obstruction, such *removal* shall be reclassified as part of the Non-Federal Sponsor's responsibility to provide lands, easements, and rights-of-way, or to perform or ensure performance of *relocations*, as applicable, pursuant to paragraph B. of this Article.

3. The documented incidental costs incurred by the Non-Federal Sponsor in accomplishing *removals* shall be included in *total costs of construction of the general navigation features*, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs, and shared in accordance with the provisions of this Agreement. Incidental costs may include legal and administrative costs (such as owner or operator notification costs, public notice or hearing costs, attorney's fees, and litigation costs) incurred by the Non-Federal Sponsor in accomplishing *removals*, but shall not include any costs that the Non-Federal Sponsor or the [SEE NOTE - 16] State of _____ has the legal capability to require of, assign to, or recover from the owner or operator of the obstruction.

[SEE NOTE - 22]

L. The Non-Federal Sponsor may request the Government to perform or provide, on behalf of the Non-Federal Sponsor, one or more of the services (hereinafter the “additional work”) described in this paragraph. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested additional work or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.E. of this Agreement.

1. Acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *general navigation features*. Notwithstanding the acquisition of lands, easements, or rights-of-way or performance of *relocations* by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with **[SEE NOTE - 11 - CHOOSE: (1) Article XIV.D. (2) Article XIV.C.]** of this Agreement.

2. Inclusion of *betterments* in the engineering and design or construction of the *general navigation features*. In the event the Government elects to include any such *betterments*, the Government shall allocate the costs of the *general navigation features* that include *betterments* between *total costs of construction of the general navigation features* and the costs of the *betterments*.

[SEE NOTE - 11]

3. Engineering and design, construction, or operation and maintenance of the *local service facilities* in conjunction with the engineering and design, construction, or operation and maintenance of the associated *general navigation features*. Notwithstanding the performance of this additional work by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.D. of this Agreement.

[SEE NOTE - 11 – FOLLOWING TWO PARAGRAPHS]

M. Subject to applicable Federal laws and regulations, the Non-Federal Sponsor, at no cost to the Government and in a timely manner, shall construct **[SEE NOTE - 23: or cause to be constructed]** the *local service facilities*, including dredging, excavation, and disposal of material therefrom, and shall be responsible for taking all actions to enable such construction. The Government shall have no obligation under this Agreement for construction of the *local service facilities* or construction of any other facilities to be provided by the Non-Federal Sponsor or a third party.

N. In accordance with Article VIII.C. of this Agreement, the Non-Federal Sponsor, at no cost to the Government, shall operate and maintain [SEE NOTE - 23: or cause to be operated and maintained] the *local service facilities*, including dredging, excavation, and disposal of material therefrom. The Government shall have no obligation under this Agreement for operation and maintenance of the local service facilities or operation and maintenance of any other facilities to be provided by the Non-Federal Sponsor or a third party.

[SEE NOTE - 24]

ARTICLE III - LANDS, [SEE NOTE - 10 - CHOOSE: (1) RELOCATIONS, (2) RELOCATIONS, DEEP DRAFT UTILITY RELOCATIONS,]
AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way necessary for construction or operation and maintenance of the *general navigation features*, including those necessary for [SEE NOTE - 10 - CHOOSE: (1) *relocations*, (2) *relocations*, *deep draft utility relocations*,] the borrowing of material, and the disposal of dredged or excavated material, and including those that the Government determines to be subject to the navigation servitude. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the issuance of the solicitation for each Government contract for construction or operation and maintenance of the *general navigation features*, or prior to the Government incurring any financial obligation for construction or operation and maintenance of a *general navigation feature* using the Government's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that work and shall provide the Government with authorization for entry thereto. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way necessary for construction or operation and maintenance of the applicable *general navigation features*, as set forth in such descriptions, and shall provide the Government with authorization for entry thereto. For so long as the *Project* remains authorized, the Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the *general navigation features* and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the [SEE NOTE - 10 - CHOOSE: (1) *relocations* (2) *relocations* and *deep draft utility relocations*] necessary for construction or operation and maintenance of the *general navigation features*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such [SEE NOTE - 10 - CHOOSE: (1) *relocations* (2) *relocations* and *deep draft utility relocations*] in

detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such [SEE NOTE - 10 - CHOOSE: (1) *relocations*. (2) *relocations and deep draft utility relocations*.] Prior to the issuance of the solicitation for each Government contract for construction or operation and maintenance of the *general navigation features*, or prior to the Government incurring any financial obligation for construction or operation and maintenance of a *general navigation feature* using the Government's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all [SEE NOTE - 10 - CHOOSE: (1) *relocations* (2) *relocations and deep draft utility relocations*] the Government determines to be necessary for that work.

[SEE NOTE - 10]

C. Nothing in this Agreement shall be deemed to affect any rights the Non-Federal Sponsor may have to seek and receive contributions from a utility owner, in accordance with Section 101(a)(4) of Public Law 99-662, as amended (33 U.S.C. 2211(a)(4)), for the owner's share of *deep draft utility relocation costs*.

D. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way necessary for construction or operation and maintenance of the [SEE NOTE - 11 - CHOOSE: (1) *general navigation features* and the *local service facilities*, (2) *general navigation features*,] including those necessary for [SEE NOTE - 10 - CHOOSE: (1) *relocations*, (2) *relocations, deep draft utility relocations*,] the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS [SEE NOTE - 10 - CHOOSE: (1) AND RELOCATIONS (2) , RELOCATIONS, AND DEEP DRAFT UTILITY RELOCATIONS]

A. To determine the additional amount owed by the Non-Federal Sponsor pursuant to Article II.F. of this Agreement, the Government shall afford credit toward an amount equal to 10 percent of *total costs of construction of the general navigation features* for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide pursuant to Article III of this Agreement, and for the value of the [SEE NOTE - 10 - CHOOSE: (1) *relocations* (2) *relocations and deep draft utility relocations*] that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III of this Agreement. However, no credit shall be afforded for the value of any lands, easements, rights-of-way, [SEE NOTE - 10 - CHOOSE: (1) *or relocations* (2) *relocations, or deep draft utility relocations*] that have been provided previously as an item of cooperation for another Federal project. In addition, no credit shall be afforded for the value of lands, easements, rights-of-way, [SEE NOTE - 10 - CHOOSE: (1) *or relocations* (2) *relocations, or deep draft utility relocations*] that were acquired or performed using *Federal program funds* unless the Federal agency providing the Federal

portion of such funds verifies in writing that affording credit for the value of such items is expressly authorized by Federal law.

[SEE NOTE - 25]

B. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A. or III.B. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions for the purpose of determining the amount of credit to be afforded in accordance with the provisions of this Article.

C. For the sole purpose of determining the amount of credit to be afforded in accordance with this Agreement and except as otherwise provided in paragraph D. of this Article, the value of lands, easements, and rights-of-way, including those necessary for the **[SEE NOTE - 10 - CHOOSE: (1) relocations, (2) relocations, deep draft utility relocations,]** borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. or C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide the Government with the appraisal no later than 6 months after the Non-Federal Sponsor provides the Government with an authorization for entry for such real property interest. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. **[SEE NOTE - 26]** The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal,

if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor, prior to instituting such proceedings, shall submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are necessary for construction or operation and maintenance of the *general navigation features*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. In the event the Government modifies its determination made pursuant to Article III.A. of this Agreement, the Government shall afford credit for the documented incidental costs associated with preparing to acquire the lands, easements, or rights-of-way identified in the original determination, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but are not necessarily limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with **[SEE NOTE - 10 - CHOOSE: (1) Article III.C. (2) Article III.D.]** of this Agreement, and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement shall also include the documented costs of obtaining appraisals prepared for crediting purposes pursuant to paragraph C.2.a. of this Article, as determined by the Government, and subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal for the purpose of determining the value of a real property interest for crediting purposes if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

D. For the sole purpose of determining the amount of credit to be afforded in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, that the Government acquires on behalf of the Non-Federal Sponsor pursuant to Article II.L.1. of this Agreement shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. The fair market value of such real property interests shall be the amount paid by the Government.

2. The value of the interest shall include the documented incidental costs of acquiring the interest. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, and actual amounts expended for payment of any relocation assistance benefits in accordance with Public Law 91-646, as amended.

E. After consultation with the Non-Federal Sponsor, the Government shall determine the value of **[SEE NOTE - 10 - CHOOSE: (1) *relocations* (2) *relocations* and *deep draft utility relocations*]** in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway* or a *utility*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the **[SEE NOTE - 16]** State of _____ would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. For a *relocation* of a *utility*, the value shall be only that portion of *relocation* costs borne by the Non-Federal Sponsor that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

[SEE NOTE - 10]

OPTION 1 – (PARAGRAPH 4 ONLY)

4. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

OPTION 2 – (PARAGRAPHS 4 AND 5)

4. The value of a *deep draft utility relocation* shall be that portion of the *deep draft utility relocation* costs borne by the Non-Federal Sponsor, but not to exceed 50 percent of the total *deep draft utility relocation* costs, that the Government determines are necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

5. *Relocation* costs and *deep draft utility relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation* or the *deep draft utility relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation* or the *deep draft utility relocation*, as determined by the Government. *Relocation* costs and *deep draft utility*

relocation costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs and *deep draft utility relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

F. Any credit afforded for the value of [SEE NOTE - 10 - CHOOSE: (1) *relocations* (2) *relocations* and *deep draft utility relocations*] performed within the *Project* boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Crediting may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the *period of construction*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the *period of construction*, the Project Coordination Team shall generally oversee the *Project*, including but not necessarily limited to matters related to: engineering and design; plans and specifications; scheduling; real property, [SEE NOTE - 10 - CHOOSE: (1) *relocation*, and *removal* requirements; (2) *relocation*, *deep draft utility relocation*, and *removal* requirements;] real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for [SEE NOTE - 10 - CHOOSE: (1) *relocations*; (2) *relocations* and *deep draft utility relocations*;] the Government's cost projections; final inspection of the entire *Project* or portions thereof; preparation of the management plan for proposed dredged or excavated material disposal; anticipated requirements for operation and maintenance of the *general navigation features*; and other matters related to the *Project*. The Project Coordination Team shall also generally oversee the coordination of schedules for [SEE NOTE - 11 -

CHOOSE: (1) the *Project* and the *local service facilities*. **(2)** the *Project*.] Oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations to the District Engineer on matters related to the *Project* that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the *general navigation features*, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations.

E. The Non-Federal Sponsor's costs of participation in the Project Coordination Team shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government's costs of participation in the Project Coordination Team shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

[SEE NOTE - 27]

A. In accordance with the provisions of this paragraph, the Government shall maintain current records, and provide to the Non-Federal Sponsor current projections of, costs, financial obligations, contributions provided by the parties, and credit afforded for the value of lands, easements, rights-of-way, [SEE NOTE - 10 - **CHOOSE: (1)** and *relocations*. **(2)** *relocations*, and *deep draft utility relocations*.]

1. As of the effective date of this Agreement, *total costs of construction of the general navigation features* are projected to be \$_____, the Non-Federal Sponsor's contribution of funds required by Article II.D. of this Agreement is projected to be \$_____, the *non-Federal proportionate share* is projected to be _____ percent, the costs allocated by the Government to a preexisting non-Federal navigation project and the Non-Federal Sponsor's contribution of funds required by Article II.E. of this Agreement are projected to be \$_____, the Government's total financial obligations for additional work and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.L. of this Agreement are projected to be \$_____, 10 percent of *total costs of construction of the general navigation features* is projected to be \$_____, the credit to be afforded for the value of lands, easements, rights-of-way, [SEE NOTE - 10 - **CHOOSE: (1)** and *relocations* **(2)** *relocations*, and *deep draft utility relocations*] is projected to be \$_____, and the additional amount required by Article II.F. of this Agreement is projected to be \$_____. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal

Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By _____ and by each quarterly anniversary thereof until the conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total costs of construction of the general navigation features*; the Non-Federal Sponsor's total contribution of funds required by Article II.D. of this Agreement; [SEE NOTE - 21: the portion of *total costs of construction of the general navigation features* allocated by the Government to each depth increment in accordance with Article II.C. of this Agreement;] the *non-Federal proportionate share*; the costs allocated by the Government to a preexisting non-Federal navigation project and the Non-Federal Sponsor's contribution of funds required by Article II.E. of this Agreement; the Government's total financial obligations for additional work and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.L. of this Agreement; [SEE NOTE - 28: the total contribution of funds required from the Non-Federal Sponsor for the forthcoming *fiscal year*;][SEE NOTE - 7: the maximum amount determined in accordance with Article XX of this Agreement;] 10 percent of *total costs of construction of the general navigation features*; the credit to be afforded for the value of lands, easements, rights-of-way, [SEE NOTE - 10 - CHOOSE: (1) and *relocations*; (2) *relocations*, and *deep draft utility relocations*;] the additional amount required by Article II.F. of this Agreement; and the annual installments calculated in accordance with paragraph D. of this Article.

[SEE NOTE – 28]

OPTION 1 – (PARAGRAPHS B. AND B.1. – B.2.)

B. The Non-Federal Sponsor shall provide the contributions of funds required by Articles II.D. and II.E. of this Agreement in accordance with the provisions of this paragraph.

[SEE NOTE – 29]

1. Not less than [SEE NOTE - 30] calendar days prior to the scheduled date for issuance of the solicitation for the first contract for construction of the *general navigation features* or commencement of construction of the *general navigation features* using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet its projected share under Articles II.D. and II.E. of this Agreement. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, [APPROPRIATE USACE DISTRICT & EROC]" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or by providing an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the *non-Federal proportionate share of financial obligations for construction* incurred prior to the commencement of the *period of construction*; (b) the *non-Federal proportionate share of financial obligations for construction* as *financial obligations for construction* are incurred; and (c) the full amount of financial obligations for costs allocated by the Government to a preexisting non-Federal navigation project as those financial obligations are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within **[SEE NOTE - 31 - NOT TO EXCEED 60]** calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

OPTION 2 – (PARAGRAPHS B. AND B.1. – B.3.)

B. The Non-Federal Sponsor shall provide the contributions of funds required by Articles II.D. and II.E. of this Agreement in accordance with the provisions of this paragraph.

[SEE NOTE – 29]

1. Not less than **[SEE NOTE - 30]** calendar days prior to the scheduled date for issuance of the solicitation for the first contract for construction of the *general navigation features* or commencement of construction of the *general navigation features* using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the *non-Federal proportionate share of financial obligations for construction* incurred prior to the commencement of the *period of construction*; (b) the Government's financial obligations for costs allocated by the Government to a preexisting non-Federal navigation project incurred prior to the commencement of the *period of construction*; (c) the projected *non-Federal proportionate share of financial obligations for construction* through the first **[SEE NOTE - 32 - CHOOSE: (1) fiscal year; (2) quarter; (3) fiscal year of the Non-Federal Sponsor;]** and (d) the Government's projected financial obligations for costs allocated by the Government to a preexisting non-Federal navigation project through the first **[SEE NOTE - 32 - CHOOSE: (1) fiscal year. (2) quarter. (3) fiscal year of the Non-Federal Sponsor.]** Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, **[APPROPRIATE USACE DISTRICT & EROC]**" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or by providing an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government.

2. Thereafter, until the construction of all the *general navigation features* is complete, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each [SEE NOTE - 32 - CHOOSE: (1) *fiscal year* (2) quarter (3) *fiscal year of the Non-Federal Sponsor*] in which the Government projects that it will make financial obligations for engineering and design or construction of the *general navigation features*, of the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the projected *non-Federal proportionate share of financial obligations for construction* for that [SEE NOTE - 32 - CHOOSE: (1) *fiscal year* (2) quarter (3) *fiscal year of the Non-Federal Sponsor*] and (b) the Government's projected financial obligations for costs allocated by the Government to a preexisting non-Federal navigation project for that [SEE NOTE - 32 - CHOOSE: (1) *fiscal year*. (2) quarter. (3) *fiscal year of the Non-Federal Sponsor*.] No later than 30 calendar days prior to the beginning of that [SEE NOTE - 32 - CHOOSE: (1) *fiscal year*, (2) quarter, (3) *fiscal year of the Non-Federal Sponsor*.] the Non-Federal Sponsor shall make the full amount of the required funds for that [SEE NOTE - 32 - CHOOSE: (1) *fiscal year* (2) quarter (3) *fiscal year of the Non-Federal Sponsor*] available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the *non-Federal proportionate share of financial obligations for construction* incurred prior to the commencement of the *period of construction*; (b) the *non-Federal proportionate share of financial obligations for construction* as *financial obligations for construction* are incurred; and (c) the full amount of the Government's financial obligations for costs allocated by the Government to a preexisting non-Federal navigation project as those financial obligations are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations in the current [SEE NOTE - 32 - CHOOSE: (1) *fiscal year*, (2) quarter, (3) *fiscal year of the Non-Federal Sponsor*.] the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within [SEE NOTE - 31 - NOT TO EXCEED 60] calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

[SEE NOTE – 33]

C. Upon conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The final or interim accounting, as applicable, shall determine *total costs of*

construction of the general navigation features and the costs allocated by the Government for operation and maintenance of any preexisting non-Federal navigation project as of the date of such accounting. In addition, for each set of costs, the final or interim accounting, as applicable, shall determine each party's required share thereof and each party's total contributions thereto as of the date of such accounting.

1. Should the final or interim accounting, as applicable, show that the Non-Federal Sponsor's total required shares of *total costs of construction of the general navigation features* and the costs allocated by the Government to a preexisting non-Federal navigation project exceed the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, [APPROPRIATE USACE DISTRICT & EROC]" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the final or interim accounting, as applicable, show that the total contributions provided by the Non-Federal Sponsor for *total costs of construction of the general navigation features* and for the costs allocated by the Government to a preexisting non-Federal navigation project exceed the Non-Federal Sponsor's total required shares thereof, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund. To the extent that such appropriations are not received, the Government shall apply the unrefunded excess amount toward the Non-Federal Sponsor's upcoming installment payment, if any, in accordance with paragraph D. of this Article.

D. The Non-Federal Sponsor shall pay, with interest, any additional amount required by Article II.F. of this Agreement in accordance with the provisions of this paragraph.

1. When the Government conducts the final accounting or any interim accounting for the *period of construction*, the Government shall determine:

a. an amount equal to 10 percent of *total costs of construction of the general navigation features* as of the date of such accounting;

b. the value, in accordance with Article IV of this Agreement, of the lands, easements, rights-of-way, [SEE NOTE - 10 - CHOOSE: (1) and *relocations* (2) *relocations*, and *deep draft utility relocations*] provided or performed pursuant to Article III of this Agreement as of the date of such accounting; and

c. the additional amount to be paid by the Non-Federal Sponsor as of the date of such accounting. The additional amount is equal to the amount determined pursuant to paragraph D.1.a. of this Article reduced by the credit afforded for the value of the lands, easements, rights-of-way, [SEE NOTE - 10 - CHOOSE: (1) and *relocations* (2) *relocations*,

and *deep draft utility relocations*] determined pursuant to paragraph D.1.b. of this Article. In the event the result of the aforesaid calculation is a negative number, the additional amount shall be zero.

2. At the time of the final accounting or the first interim accounting in which the Government determines that the additional amount is greater than zero, the Government shall calculate annual installments for payment of the additional amount, and such annual installments shall be substantially equal. To calculate the annual installments, the Government shall amortize the additional amount over a period of [SEE NOTE - 34] years (hereinafter the “payment period”), beginning on the date the Government notifies the Non-Federal Sponsor of the additional amount, using an interest rate determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the payment period during the month preceding the *fiscal year* in which the *period of construction* commences, plus a premium of one-eighth of one percentage point for transaction costs. The Government shall notify the Non-Federal Sponsor in writing of the additional amount and the annual installments.

3. Thereafter, at the time of the final accounting or any additional interim accounting conducted prior to the end of the payment period, the Government shall recalculate the annual installments by amortizing the outstanding portion of the additional amount over the remaining portion of the payment period using an interest rate determined by the Secretary of the Treasury, taking into consideration such average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the remaining portion of the payment period during the month preceding the *fiscal year* in which the recalculation is made, plus a premium of one-eighth of one percentage point for transaction costs. The Government shall notify the Non-Federal Sponsor in writing of the recalculated additional amount and the recalculated annual installments and the Non-Federal Sponsor shall pay the recalculated annual installments in lieu of the previous annual installments.

4. Thereafter, at the time of the final accounting or any additional interim accounting conducted after the payment period has elapsed, the Government shall notify the Non-Federal Sponsor in writing of the recalculated additional amount. If the Government determines that the Non-Federal Sponsor’s payments towards the additional amount are less than the recalculated additional amount, the Non-Federal Sponsor, not later than 90 days from receipt of such notice, shall pay to the Government the outstanding portion of the additional amount by delivering a check payable to “FAO, USAED, [APPROPRIATE USACE DISTRICT & EROC]” to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

5. In addition to any recalculation of the annual installments in accordance with paragraph D.3. of this Article, the Government, until the end of the payment period, shall recalculate the annual installments at five year intervals by amortizing the outstanding portion of the additional amount over the remaining portion of the payment period using an interest rate determined by the Secretary of the Treasury, taking into consideration such average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the payment period during the month preceding the *fiscal year* in which

the recalculation is made, plus a premium of one-eighth of one percentage point for transaction costs. The Government shall notify the Non-Federal Sponsor in writing of the recalculated annual installments and the Non-Federal Sponsor shall pay the recalculated annual installments in lieu of the previous annual installments.

6. Subject to paragraphs C.2. and E.3.b. of this Article, the Non-Federal Sponsor shall pay the installments calculated or recalculated pursuant to paragraphs D.2., D.3., or D.5. of this Article each year on the anniversary of the date the Government notifies the Non-Federal Sponsor of the additional amount, over a period not to exceed the payment period, by delivering a check payable to “FAO, USAED, [APPROPRIATE USACE DISTRICT & EROC]” to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

7. Notwithstanding paragraph D.6. of this Article, the Non-Federal Sponsor, in its sole discretion, may prepay the additional amount, in whole or in part, at any time. Notwithstanding paragraphs D.2., D.3., or D.5. of this Article, there shall be no charges for interest on any portion of the additional amount that is paid within 90 days after the Government notifies the Non-Federal Sponsor of the additional amount, nor shall there be interest charges on any portion of an increase to the additional amount that is caused by recalculation of the additional amount and that is paid within 90 days after the Government notifies the Non-Federal Sponsor of such recalculated additional amount.

8. If the Government determines that the Non-Federal Sponsor has made payments towards the additional amount that exceed the additional amount, the Government, subject to the availability of funds, shall refund the amount of the excess, without interest. In the event funds are not available to make such refund, the Government shall seek such appropriations as are necessary to make such refund.

E. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.L. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than [SEE NOTE - 30] calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of the additional work. No later than 30 calendar days prior to the Government incurring any financial obligation for additional work, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such additional work through any of the payment mechanisms specified in paragraph B.1. of this Article.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government’s financial obligations for such additional work as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such additional work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required.

Within [SEE NOTE - 31 - NOT TO EXCEED 30] calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. At the time the Government conducts the final or interim accounting, as applicable, or at the end of each *fiscal year* in which the Government incurs costs for additional work provided or performed prior to the *period of construction*, the Government shall conduct an accounting of the Government's financial obligations for additional work incurred during the applicable period and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals and eminent domain proceedings prevent a final accounting of additional work incurred during such applicable period from being conducted in a timely manner, the Government shall conduct an interim accounting of additional work incurred during such applicable period and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting of additional work incurred during such applicable period to complete the final accounting of additional work incurred during such applicable period and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such final or interim accounting, as applicable, shall determine the Government's total financial obligations for additional work incurred during the applicable period and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the final or interim accounting, as applicable, show that the total obligations for additional work incurred during the applicable period exceed the total contribution of funds provided by the Non-Federal Sponsor for such additional work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, [APPROPRIATE USACE DISTRICT & EROC]" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the final or interim accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for additional work during the applicable period exceeds the total obligations for such additional work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund. To the extent that such appropriations are not received, the Government shall apply the unrefunded excess amount toward the Non-Federal Sponsor's upcoming installment payment, if any, in accordance with paragraph D. of this Article.

[SEE NOTE - 10]

F. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.H. of this Agreement in accordance with the provisions of this paragraph.

1. By _____ of each year, the Government shall provide the Non-Federal Sponsor with the current projections, for the upcoming *fiscal year*, of the Government's total financial obligations for operation and maintenance, of the *deep draft portion of financial obligations for operation and maintenance*, and of the funds required from the Non-Federal Sponsor to cover its share of the *deep draft portion of financial obligations for operation and maintenance*.

2. The Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each [SEE NOTE - 32 - CHOOSE: (1) *fiscal year* (2) quarter (3) *fiscal year of the Non-Federal Sponsor*] in which the Government projects that it will make financial obligations for operation and maintenance of the *general navigation features*, of the funds the Government determines, after consideration of any excess for which a refund is outstanding under paragraph F.4.b. of this Article, to be required from the Non-Federal Sponsor to meet the Non-Federal Sponsor's share of the *deep draft portion of financial obligations for operation and maintenance* through that [SEE NOTE - 32 - CHOOSE: (1) *fiscal year*. (2) quarter. (3) *fiscal year of the Non-Federal Sponsor*.] No later than 30 calendar days prior to the beginning of that [SEE NOTE - 32 - CHOOSE: (1) *fiscal year*, (2) quarter, (3) *fiscal year of the Non-Federal Sponsor*,] the Non-Federal Sponsor shall make the full amount of the required funds for that through that [SEE NOTE - 32 - CHOOSE: (1) *fiscal year* (2) quarter (3) *fiscal year of the Non-Federal Sponsor*] available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Non-Federal Sponsor's share of the *deep draft portion of financial obligations for operation and maintenance* as financial obligations are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such *deep draft portion of financial obligations for operation and maintenance* in the current [SEE NOTE - 32 - CHOOSE: (1) *fiscal year*, (2) quarter, (3) *fiscal year of the Non-Federal Sponsor*,] the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within [SEE NOTE - 31 - NOT TO EXCEED 60] calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

4. Upon completion of each *fiscal year* in which the Government incurs financial obligations for operation and maintenance, the Government shall conduct an accounting of the Government's financial obligations for operation and maintenance incurred in that *fiscal year* and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals prevent a final accounting for such *fiscal year* from being conducted in a timely manner, the Government shall conduct an interim accounting for such *fiscal year* and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals for such *fiscal year* are

resolved, the Government shall amend the interim accounting for such *fiscal year* to complete the final accounting for such *fiscal year* and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such final or interim accounting, as applicable, shall determine the Government's total financial obligations for operation and maintenance incurred in that *fiscal year*, the *deep draft portion of financial obligations for operation and maintenance* incurred in that *fiscal year*, each party's contribution provided for the *deep draft portion of financial obligations for operation and maintenance* incurred in that *fiscal year* as of the date of such accounting, and each party's required share of the *deep draft portion of financial obligations for operation and maintenance* incurred in that *fiscal year*.

a. Should the final or interim accounting, as applicable, show that the Non-Federal Sponsor's required share of the *deep draft portion of financial obligations for operation and maintenance* incurred in that *fiscal year* exceeds the Non-Federal Sponsor's total contribution of funds provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, [APPROPRIATE USACE DISTRICT & EROC]" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the final or interim accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for the *deep draft portion of financial obligations for operation and maintenance* incurred in that *fiscal year* exceeds the Non-Federal Sponsor's required share thereof, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event funds are not available to refund the excess amount, the Government shall seek such appropriations as are necessary to make the refund. To the extent that such appropriations are not received, the Government shall apply the unrefunded excess amount toward the Non-Federal Sponsor's next contribution of funds in accordance with paragraph F.2. of this Article.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties each shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII - OPERATION AND MAINTENANCE

A. The Government, subject to the availability of funds and as it determines necessary, shall operate and maintain the *general navigation features*.

B. The Non-Federal Sponsor hereby authorizes the Government to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of operating and maintaining the *general navigation features*. However, nothing contained herein shall convey to the Government any interest in real property owned or controlled by the Non-Federal Sponsor.

[SEE NOTE - 11]

C. Subject to applicable Federal laws and regulations and for so long as the *Project* remains authorized, and commensurate with the Government's operation and maintenance of the *general navigation features*, the Non-Federal Sponsor, at no cost to the Government, shall operate and maintain [SEE NOTE - 23: or cause to be operated and maintained] the *local service facilities* in a manner compatible with the authorized purposes of the *Project* including dredging, excavation, and disposal of material therefrom. The Non-Federal Sponsor shall be responsible for taking all actions to enable such operation and maintenance.

ARTICLE IX - HOLD AND SAVE

[SEE NOTE - 35: Subject to the provisions of Article XXI of this Agreement, the] The Non-Federal Sponsor shall hold and save the Government free from all damages arising from construction or operation and maintenance of the *Project* [SEE NOTE - 11 - CHOOSE: (1) , any *betterments*, and the *local service facilities*, (2) and any *betterments*,] except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as

implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *general navigation features* shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the *general navigation features* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Project*.

B. If the Government determines that Federal funds for the [SEE NOTE - 6 - CHOOSE: (1) *Project* (2) Authorized Project] are not sufficient to meet the Federal share of the costs of work on the [SEE NOTE - 6 - CHOOSE: (1) *Project* (2) Authorized Project] in the then-current or upcoming *fiscal year*, the Government shall so notify the Non-Federal Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient Federal funds for the [SEE NOTE - 6 - CHOOSE: (1) *Project* (2) Authorized Project] or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement, whichever is earlier.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or [SEE NOTE - 11 - CHOOSE: (1) Article XIV.D. (2) Article XIV.C.] of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement [SEE NOTE - 10: or an accounting in accordance with Article VI.F. of this Agreement, as applicable].

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or [SEE NOTE - 11 - CHOOSE: (1) Article XIV.D. (2) Article XIV.C.] of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

[SEE NOTE - 36]

ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be

necessary for construction or operation and maintenance of the *general navigation features*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances that are determined by the Government to be attributable to the *general navigation features* shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances that are determined by the Government to be attributable to the *general navigation features* shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

[SEE NOTE - 11]

B. The Non-Federal Sponsor shall perform, or ensure performance of, any investigations it determines to be necessary to identify the existence and extent of any hazardous substances regulated under CERCLA that may exist in, on, or under lands, easements, and rights-of-way necessary solely for construction or operation and maintenance of the *local service facilities*. However, for any of those lands that the Government determines to be subject to the navigation servitude, the Non-Federal Sponsor must obtain prior written instructions from the District Engineer regarding the method of testing and must perform such investigations only in accordance with those instructions. The costs of any investigations performed under this paragraph shall be borne entirely by the Non-Federal Sponsor. The Government shall have no obligation under this Agreement for the costs of any investigations performed under this paragraph.

C. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be necessary for construction or operation and maintenance of the *general navigation features*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsor should proceed. **[SEE NOTE - 11: In the event it is discovered through any means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way necessary for construction or operation and maintenance of the *local service facilities*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other.]**

D. The Government and the Non-Federal Sponsor shall determine whether to initiate construction or operation and maintenance of the *general navigation features*, or, if already in construction or operation and maintenance of the *general navigation features*, whether to continue with construction or operation and maintenance of the *general navigation features*, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be necessary for construction or operation and maintenance of the *general navigation features*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction or operation and maintenance of the *general navigation features* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total costs of construction of the general navigation features*. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the *general navigation features*. **[SEE NOTE - 11:** The Government shall have no obligation under this Agreement for the costs of any cleanup and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination, on lands, easements, or rights-of-way necessary solely for the *local service facilities*.]

E. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to **[SEE NOTE - 11 - CHOOSE: (1)** paragraph D. **(2)** paragraph C.] of this Article shall not relieve any third party from any liability that may arise under CERCLA.

F. To the maximum extent practicable, the Government and the Non-Federal Sponsor shall perform their responsibilities under this Agreement in a manner that will not cause liability to arise under CERCLA.

ARTICLE XV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

[SEE NOTE - 37]

If to the Non-Federal Sponsor:

If to the Government:

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVII - HISTORIC PRESERVATION

A. The Government, as it determines necessary for the *Project*, shall perform any identification, survey, or evaluation of historic properties.

1. Any costs of identification, survey, and evaluation of historic properties determined by the Government to be attributable to construction of the *general navigation features* shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

2. Any costs of identification, survey, and evaluation of historic properties determined by the Government to be attributable to operation and maintenance of the *general navigation features* shall be considered financial obligations for operation and maintenance of the *general navigation features* and shared in accordance with Article II.H. of this Agreement.

B. The Government, as it determines necessary for the *Project*, shall perform any archeological data recovery activities associated with historic preservation. As specified in Section 7(a) of Public Law 86-523, as renumbered and amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of archeological data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in *total costs of construction of the general navigation features*, up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the *general navigation features*.

C. The Government shall not incur costs for archeological data recovery activities that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit (and the Secretary of the Interior has concurred in the waiver) in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. 469c-2(3)).

1. Any costs of archeological data recovery activities that exceed the one percent limit and are determined by the Government to be attributable to construction of the *general navigation features* shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

2. Any costs of archeological data recovery activities that exceed the one percent limit and are determined by the Government to be attributable to operation and maintenance of the *general navigation features* shall be considered financial obligations for operation and maintenance of the *general navigation features* and shared in accordance with Article II.H. of this Agreement.

[SEE NOTE – 38 – FOLLOWING TWO ARTICLES]

ARTICLE XVIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

ARTICLE XIX - NON-LIABILITY OF OFFICERS AND EMPLOYEES

No officer, agent, consultant, or employee of the Non-Federal Sponsor, nor any officer, agent, consultant, or employee of the Government, may be charged personally, or held liable, under the terms or provisions of this Agreement because of any breach, attempted breach, or alleged breach thereof, except as provided in Section 912(b) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (42 U.S.C. 1962d-5b note), or other applicable law.

[SEE NOTE – 7]

ARTICLE XX - SECTION 902 PROJECT COST LIMITS

The Non-Federal Sponsor has reviewed the provisions set forth in Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280), and understands that it establishes for the **[SEE NOTE - 6 - CHOOSE: (1) Project (2) Authorized Project]** the maximum amount for *total costs of construction of the general navigation features* **[SEE NOTE - 39: plus the costs of the local service facilities]** **[SEE NOTE – 40: plus the value, as determined in accordance with Article IV of this Agreement, of the contributions provided or performed by the Non-Federal Sponsor in accordance with Article III of this Agreement]** **[SEE NOTE - 6: and for corresponding amounts for other elements of the Authorized Project]**. Notwithstanding any other provision of this Agreement, the Government shall not make a new financial obligation or expenditure for the *general navigation features* or include any additional contribution provided by the Non-Federal Sponsor in *total costs of construction of the general navigation features*, if such obligation, expenditure, or inclusion

would cause *total costs of construction of the general navigation features* [SEE NOTE - 39: , plus the costs of the *local service facilities*] [SEE NOTE - 40: , plus the value, as determined in accordance with Article IV of this Agreement, of any contributions provided or performed by the Non-Federal Sponsor in accordance with Article III of this Agreement] [SEE NOTE - 6: , together with the corresponding amounts for other elements of the Authorized Project,] to exceed this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$_____, as calculated in accordance with ER 1105-2-100 using October 1, 20__ price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280).

[SEE NOTE - 41]

ARTICLE XXI - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the _____ of the _____ of _____ [SEE NOTE - 42: , where creating such an obligation would be inconsistent with _____ of the _____ of _____].

B. The Non-Federal Sponsor intends to fulfill its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose appropriations of funds in amounts sufficient to fulfill these obligations for that [SEE NOTE - 43 - CHOOSE: (1) year, (2) biennium,] and shall use all reasonable and lawful means to secure those appropriations. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to fulfill these obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, the Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments or contributions of funds under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to fulfill these obligations, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the [SEE NOTE - 44].

DEPARTMENT OF THE ARMY

[FULL NAME OF NON-FEDERAL SPONSOR]

BY: _____
[SIGNATURE]
[TYPED NAME]
[TITLE IN FULL]

BY: _____
[SIGNATURE]
[TYPED NAME]
[TITLE IN FULL]

DATE: _____

DATE: _____

[SEE NOTE - 45]

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the [FULL NAME OF NON-FEDERAL SPONSOR], that the [FULL NAME OF NON-FEDERAL SPONSOR] is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the [FULL NAME OF NON-FEDERAL SPONSOR] in connection with the [FULL NAME OF PROJECT], and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the [FULL NAME OF NON-FEDERAL SPONSOR] have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____.

 [SIGNATURE]
[TYPED NAME]
[TITLE IN FULL]

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[SIGNATURE OF PCA SIGNATORY]

[TYPED NAME]

[TITLE IN FULL]

DATE: _____